Pegasus Snoopware: Cloak of National Security

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INDIA LEGAL

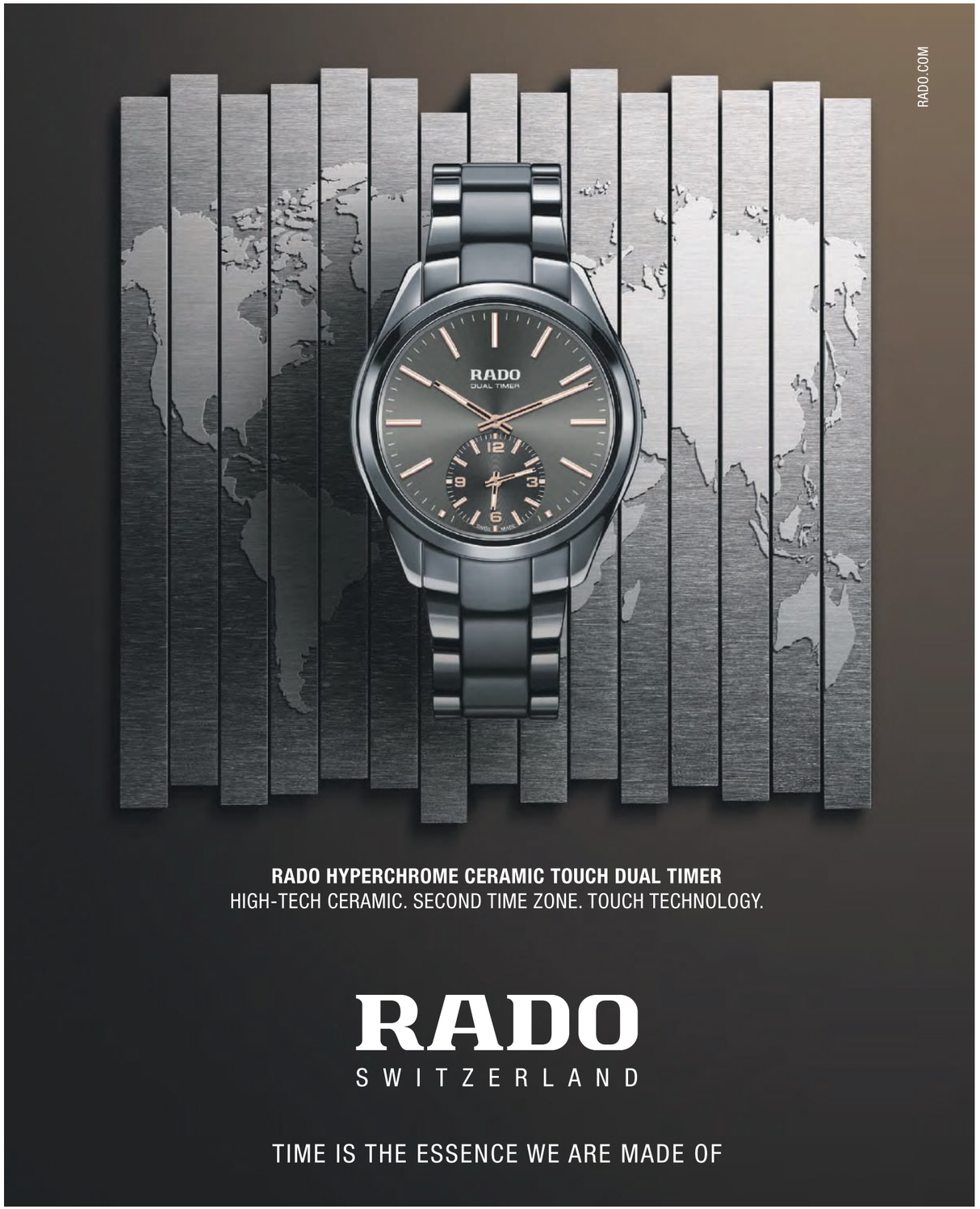
January 24, 2022 ₹ 100

STORIES THAT COUNT

HATE MONGERING

The Supreme Court steps in to deal with venomous incitements to violence through communal speeches and apps

VISIT…



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TRUMPRANT

Inderjit Badhwar

IN the pursuit of a little variety, *India Legal*, on a fairly regular basis, carries international stories which are not strictly about legal developments but have, nonetheless, an impact on the law and society at large. We have closely followed American politics over several years through the eyes and penmanship of our US correspondent Kenneth "Tiv" Tiven, a former founding vice-president of *CNN* and foreign editor of *The Washington Post*. He has been prolific in his output with an astute eye for the offbeat within the folds of a regular "beat" story, with an enviable engaging style of in-your-face, often cheeky story telling.

Most of the readers of this magazine and its web pages have experienced the beastly beatitudes of Donald Trump, the man who refuses to be ex-President, through Tiven's writings. The defeated orange-haired former US chief executive's perpetuation of the myth of the "stolen election" that brought Joe Biden into power has riven American society, inundated American courts with challenges, and threatens the founding principles of the American Constitution.

Tiven wrote me an informal note the other day regarding a recent Trump interview on *National Public Radio* (NPR), the superbly informative American version of *BBC*. I thought I should reproduce this in this space. Wrote Tiven: "For those of us who like the written word. This transcript of Trump with *NPR*s' Steve Inskeep is instructive..... much more so than when you listen to the audio word salad the former dishes out. Lucky for him, his voters will never hear about this."

The former president spoke with *NPR*'s Steve Inskeep on Tuesday (January 11) in a brief phone interview. They discussed vaccinations for Covid-19, the 2020 election and the outlook for Republicans in the 2022 mid-term elections.

The conversation was cut short when Trump hung up the phone while being questioned about his continued lies about the outcome of the 2020 election. He repeatedly attempted to assert misinformation about his election loss, as well as about the necessity of vaccinations.

Former President Donald Trump: Hello.
Steve Inskeep: Mr. President.
Trump: Hello, Steve, how are you?
Steve: I'm doing OK. Thanks for taking the time today. It's great to talk with you.
Trump: OK. Absolutely. Absolutely.
Steve: There's no reason that you would know this, but we first invited you on the program in 2015, so it's great to get you.
Trump: Oh, wow. Well, I guess I — I got lucky by not doing it, right? But that's OK.
Steve: Maybe so. Maybe so, but you —
Trump: Are we going live, Steve? Are we, uh —
Steve: No, we're — no, we're not going live. This is pre-taped, and —
Trump: OK, fine.
Steve: And I promised to keep it to about 15 minutes, so I'll do my best to do that.
Trump: Very good. Very good, Steve.
Steve: And why don't we just dive right in? I've got a lot to talk about. There's a lot to go over, but I want to begin briefly on the pandemic. What advice would you give to Americans who haven't chosen to get vaccinated?
Trump: Well, first of all, the mandate is really hurting our country. Now that's advice to an administration more so than to the Americans. A lot of Americans aren't standing for it, and it's hurting our country. It's hurting our economy very badly. And being very—the proud person that did so well with therapeutics and, and vaccines and everything else and getting them done in record times, you know, I — I have a lot to say on the subject. And one of the things I say is they have to start promoting and making the therapeutics more available, because we have great therapeutics, too, in addition ▶

to the vaccines.
Steve: What is the advice on the vaccines, though?
Trump: But the therapeutics. The vaccines, I recommend taking them, but I think that has to be an individual choice. I mean, it's got to be individual, but I recommend taking them. Many people recommend them. And if some people don't want, they shouldn't have to take them. They can't be mandated, as the expression goes. And I think that's very important. Personally, I feel very comfortable having taken them. I've had absolutely no reverberation.
Steve: Do you think the pandemic will continue as long as millions of people do choose not to vaccinate?
Trump: I think it's going to phase out. You know, there are many people that have had it, if you look at the numbers. I don't know why they would be getting the vaccine for the most part, unless they were at a certain age group and they had certain problems, whether it's the high blood pressure —
Steve: --Yeah.
Trump: — the diabetes and, you know, various things in particular. But, you know, we — the administration has to start giving credit to people that had the China plague — or call it whatever you want. But it came out of China, and it's a disaster for the world, to —
Steve: People can be — I'll mention that people can be reinfected, but I want to move on. South Dakota —
Trump: No, they can be. They can be. But generally speaking, it's not as bad.
Steve: Let me ask about another piece of news here. South Dakota Sen. Mike Rounds, as I think you know, was on ABC over the weekend. He spoke about the 2020 election and also referred to the election campaign that is now starting in 2022. Let's listen.

Sen. Mike Rounds (playback recording): "We simply did not win the election as Republicans for the presidency. ... And if we simply look back and tell our people, don't vote, because, you know, there's cheating going on, then we're going to put ourselves in a — in a — in a huge disadvantage."
Steve: Couple of things to ask about there, Mr. President. Let's start with the politics. Is it a disadvantage for Republicans to keep talking about the 2020 election in 2022?
Trump: No, I think it's an advantage, because otherwise they're going to do it again in '22 and '24. And Rounds is wrong on that, totally wrong. If you look at the numbers, if you look at the findings in Arizona, if you look at what's going on in Georgia, Pennsylvania and Wisconsin, by the way — and take a look at Wisconsin — they're finding things that nobody thought possible. This was a corrupt election.
Steve: I just have to point out Doug Logan — to name one of the states that you just named — Doug Logan, who ran the audit in Arizona that was set up by your allies, didn't find serious problems. This is a quote. "The ballots that were provided to us to count in the Coliseum very accurately correlate with the official canvass numbers." He raised a bunch of administrative issues but didn't find a problem that would have changed the result at all.
Trump: The ballots may correspond, but look at the ballots themselves. The number of ballots doesn't mean anything. It's who signed the ballots, where did the ballots come from. What you really have to do in that report is look at the findings. And the findings are devastating for Arizona. They're devastating like nobody's seen before —
Steve: Why did — why did your —
Trump:— And other states are just as bad.
Steve: Why did Republican officials in Arizona accept the results then?
Trump: Because they're RINOs, ["Republican in Name Only," used by Republicans to accuse other Republicans of being insufficiently conservative], and frankly, a lot of people are questioning that. Why would they? They fought very hard, the Maricopa County people.[Editor's note: The audit results, which were released in September, showed that the number of ballots in Maricopa, Arizona state's largest county, broke for Biden by a 45,000-vote margin] And people don't understand it, because all you have to do is look at the findings. And, just so you know, some of those people went before Congress a short while ago, and they were grilled by Congressman (Andy) Biggs [Pro-Trump ultra conservative Congressman from Arizona]. You ought to take a look at their testimony. They got up and gave a beautiful statement. And then when it came time to ask, why this? Why that? What about these votes? What about those votes? They look like total fools.
Steve: Let me read you some short quotes. The first is by one of the judges, one of the 10 judges you appointed, who ruled on this. And there were many judges, but 10 who you appointed. Brett Ludwig, U.S. District Court in Wisconsin, who was nominated by you in 2020. He's on the bench, and he says, quote, "This court allowed the plaintiff the chance to make his case, and he has lost on the merits." Another quote, Kory Langhofer, your own campaign attorney in Arizona, Nov. 12, 2020, quote, "We are not alleging fraud in this lawsuit. We are not alleging anyone stealing the election." And also Rudy Giuliani, your lawyer, Nov. 18, 2020, in Pennsylvania, quote, "This is not a fraud case." Your own lawyers had no evidence of fraud, they said in court they had no evidence of fraud, and the judges ruled against you every time on the merits.
Trump: It was too early to ask for fraud and to talk about fraud. Rudy [Giuiliani, Trump's personal lawyer] said that, because of the fact it was very early with the — because that was obviously at a very, very — that was a long time ago. The ▶

NPR

"...the mandate is really hurting our country. A lot of Americans aren't standing for it, and it's hurting our country. It's hurting our economy very badly. The vaccines, I recommend taking them, but I think that has to be an individual choice."
—Donald Trump on Covid-19 vaccination in the US

ONE-ON-ONE: Donald Trump spoke with *National Public Radio*'s Steve Inskeep (right) in a phone interview. They discussed vaccinations for Covid-19, the 2020 election and the outlook for Republicans in the 2022 mid-term elections

things that have found out have more than bore out what people thought and what people felt and what people found. When you look at Langhofer, I disagree with him as an attorney. I did not think he was a good attorney to hire. I don't know what his game is, but I will just say this: You look at the findings. You look at the number of votes. Go into Detroit and just ask yourself, is it true that there are more votes than there are voters? Look at Pennsylvania. Look at Philadelphia. Is it true that there were far more votes than there were voters?

RATTLED BY THE VERDICT
(Below) A protest launched by supporters of Donald Trump after the 2020 presidential election results; (bottom) Trump addressing Republican supporters at a rally during his campaign

Steve: It is not true that there were far —
Trump: Gee, that's a pretty tough thing to —
Steve: It is not true.
Trump: That's a pretty tough problem.
Steve: It is not true that there were far more votes than voters. There was an early count. I've noticed you've talked about this in rallies and you've said, reportedly, this is true. I think even you know that that was an early report that was corrected later.
Trump: Well, you take a look at it. You take a look at Detroit. In fact, they even had a hard time getting people to sign off on it because it was so out of balance. They called it out of balance. So you take a look at it. You know the real truth, Steve, and this election was a rigged election.
Steve: Why is it that you think that the vast majority of your allies in the United States Senate are not standing behind you? We did have that statement by Mike Rounds [Republican Senator from South Dakota].
Trump: Because Mitch McConnell [Senate Minority leader, Republican from Kentucky] is a loser. And frankly, Mitch McConnell, if he were on the other side and if (Chuck) Schumer [Senate majority leader, Democrat from New York] were put in his position, he would have been fighting this like you've never seen before.

"...if you look at the findings in Arizona, if you look at what's going on in Georgia, Pennsylvania and Wisconsin, by the way — and take a look at Wisconsin — they're finding things that nobody thought possible. This was a corrupt election."
—Trump on US presidential election in 2020

He would have been fighting this, because when you look at it, and this is long — is a long way from over. You take a look at what's going on now in Pennsylvania. Take a look at what's going on in Wisconsin. You just take a look. Now, we had a lot of cases where the judges wouldn't hear him. We had a case in Nevada that was so good. You read the papers. It's impossible. The judge refused to even listen to it. We had many cases. In fact, they say, and I can't testify because it's been through a lot of systems, a lot of different systems. But they say, and they say very strongly, the judges just — nobody's really gotten a chance to look. Look at the United States Supreme Court. They refused to hear the case. And you had, I guess, 19 states suing —
Steve: They said, there was no standing to give the case. That's correct. Can I just ask —
Trump: Well, yeah, no standing, I know, no standing. And the president of the United States supposedly didn't have standing, either. So I wanted to file it myself. They said, "Sir, you don't have standing." I said, "Wait a minute. I'm the president of the United States. They just rigged an election." Hundreds of thousands of votes in different states. They just rigged an election. We got — we got a number of votes that, I think you'll agree — no sitting president has ever gotten the number of votes that I got. No sitting president has ever gotten —
Steve: Lot of votes. That's true. In — lot of — lot of — you —
Trump: No sitting president. Do you — I — nobody believes. You think Biden got 80 million votes? Because I don't believe it.
Steve: It's true — it's true that you got more than any sitting president in the election you've disputed.
Trump: You mean he got them sitting in his basement. He got 80 — how come he couldn't — then how come Biden —
Steve: If I can, Mr. President, Mr. President.
Trump: Let me ask you this question. How come Biden couldn't attract 20 people for a crowd? How come when he went to speak in different locations, nobody came to watch, but all of a sudden he got 80 million votes? Nobody believes that, Steve. Nobody believes that.
Steve: If you'll forgive me, maybe because the election was about you. If I can just move on to ask, are you telling Republicans in 2022 that they must press your case on the past election in order to get your endorsement? Is that

an absolute?
Trump: They are going to do whatever they want to do — whatever they have to do, they're going to do. But the ones that are smart — the ones that know, you take a look at. Again, you take a look at how Kari Lake is doing, running for governor. She's very big on this issue. She's leading by a lot. People have no idea how big this issue is, and they don't want it to happen again. It shouldn't be allowed to happen, and they don't want it to happen again.
Steve: I want to —
Trump: And the only way it's not going to happen again is you have to solve the problem of the presidential rigged election of 2020.
Steve: Mr. President, if I —
Trump: So Steve, thank you very much. I appreciate it.
Steve: Woah, woah, woah, I have one more question. I want to ask about a court hearing yesterday on Jan. 6. Judge Amit Mehta ... He's gone. OK.

Tiven's Comment: Baby Trump doesn't like being challenged about his Big Lie. And he hardly ever is, unfortunately.

"You think Biden got 80 million votes? Because I don't believe it. Let me ask you this question. How come Biden couldn't attract 20 people for a crowd? How come when he went to speak in different locations, nobody came to watch, but all of a sudden he got 80 million votes? Nobody believes that..."
—Trump on Joe Biden's victory in 2020 polls

Twitter: @indialegalmedia
Website: www.indialegallive.com
Contact: editor@indialegallive.com

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Chief Patron Justice MN Venkatachaliah

Editor Inderjit Badhwar

Senior Managing Editor Dilip Bobb

Deputy Managing Editor Shobha John

Executive Editor Sujit Bhar

Deputy Editor Prabir Biswas

Junior Production Executive Shivangi Mugloo

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Group Brand Adviser
Richa Pandey Mishra

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Anand Raj Singh

Sales & Marketing
Tim Vaughan, K L Satish Rao, James Richard, Nimish Bhattacharya, Misa Adagini

Circulation Manager
Rakesh Kumar; contact no: 8377009646
email: indialegal.enc@gmail.com

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A -9, Sector-68, Gautam Buddh Nagar, NOIDA (U.P.) - 201309
Phone: +9 1-0120-2471400- 6127900 ; Fax: + 91- 0120-2471411
e-mail: editor@indialegalonline.com
website: www.indialegallive.com
MUMBAI: Arshie Complex, B-3 & B4, Yari Road, Versova, Andheri, Mumbai-400058
RANCHI: House No. 130/C, Vidyalaya Marg, Ashoknagar, Ranchi-834002.
LUCKNOW: First floor, 21/32, A, West View, Tilak Marg, Hazratganj, Lucknow-226001.
PATNA: Sukh Vihar Apartment, West Boring Canal Road, New Punaichak, Opposite Lalita Hotel, Patna-800023.
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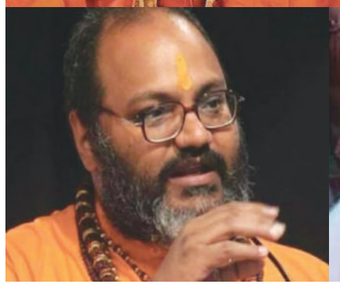

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Contact: editor@indialegallive.com

PM Security Breach: Former SC judge Indu Malhotra to lead probe panel set up by top court

Putting on hold enquiries by the two probe panels, created by the centre and the Punjab government, the Supreme Court bench led by Chief Justice of India (CJI) NV Ramana decided to have its own probe committee to look into the issue of the alleged security breach involving the prime minister's convoy in Punjab (above) on January 5.

The probe panel will be led by the retired top court judge, Justice Indu Malhotra (left). The panel will also have the Director-General of National Investigation Agency or his nominee, not below the rank of Inspector-General, the Director-General of Police of the Union Territory of Chandigarh, the Additional Director-General of Police (Security) of Punjab and the Registrar-General of the Punjab and Haryana High Court.

The taking over of the inquiry by the top court is being seen as a setback for the centre, with the promise of a fair and impartial inquiry under an able judge. The mandate for the high-powered committee is that it should find out how this (alleged) security breach happened, who was responsible for it and the safeguards needed to ensure that such a lapse is not repeated in future.

While there is no clear deadline set for the committee, the CJI has asked the committee to submit its report at the earliest.

The CJI said in his order: "We are of the considered opinion that the questions (regarding the breach) cannot be resolved through one-sided inquiries. A judicial trained and independent mind, duly assisted by officers well-acquainted with the security considerations, and the Registrar-General of the High Court, who has seized the records pursuant to our orders, will be best suited to look into all the issues and submit a confidential report for the consideration of this court."

The action of the apex court came after an NGO pleaded for action against officials responsible for the security breach.

Supreme Court objects to one-year suspension of 12 MLAs in Maharashtra

The Supreme Court took objection to the decision to suspend 12 BJP MLAs in Maharashtra from the assembly for one year. The Court said that it was *prima facie* unconstitutional, because according to the Constitution, they cannot be suspended beyond six months and seats have to be legally filled within that period.

The MLAs were suspended on July 5 last year after the state government accused them of "misbehaving" with the presiding officer in the Speaker's chamber.

A bench of Justices AM Khanwilkar, Dinesh Maheshwari and CT Ravikumar pointed out that the House has the power to suspend a member, but for not more than 59 days. The Court agreed with the MLAs' contention that "decision is worse than expulsion". "You can't create a constitutional void, a hiatus situation for the constituency…. Each constituency has an equal amount of right to be represented in the House," the Court said.

Father has full responsibility of daughter's maintenance: Delhi High Court

The Delhi High Court recently ruled that it was the father's duty to take care of his unmarried daughters, bear all expenses related to their maintenance, including education and marriage, irrespective of the fact that they have turned major or are employed and earning well. Justices Vipin Sanghi and Jasmeet Singh observed that the father cannot shirk responsibility.

The Court was hearing a plea from a divorced woman. She had challenged a decision of the family court, which had granted her divorce on ground of cruelty, but denied maintenance for her and two major daughters. The Court shot down the father's argument that since all his daughters were majors at the time of filing the application, they were not entitled to maintenance.

Punjab & Haryana HC grants interim bail to SAD leader Majithia in drug case

The Punjab and Haryana High Court granted interim anticipatory bail to Shiromani Akali Dal leader Bikram Singh Majithia (below) in a drugs case. The Court, however, said that Majithia, booked under the Narcotic Drugs and Psychotropic Substances Act in December last year, would join the probe in the case. Earlier, a Mohali court rejected his bail plea and Majithia moved the High Court.

The counsel for Majithia sought his bail on the grounds that there was inordinate delay in lodging the FIR and permission was not sought from the Court for the same. The counsel also claimed that there were political interests behind filing the FIR and Majithia had no criminal record and was cooperating with the probe agencies.

Supreme Court dismisses challenge of Bihar government over prohibition law

Chief Justice of India (CJI) NV Ramana had recently cited the example of the prohibition law (below) in Bihar while speaking about "lack of foresight" in drafting legislation that leads to courts being flooded with cases. Now a bench led by him has shot down a batch of appeals from the Bihar government challenging the grant of bail to people accused under the stringent law.

While addressing the Bihar's counsel, the CJI said: "You know how much impact this law (The Bihar Prohibition and Excise Act, 2016) has created in the working of the Patna High Court, and it is taking one year to get a matter listed there and all the courts are choked with the liquor bail matters. I have been told that 14-15 high court judges are hearing these bail matters every day and no other matters are being taken up."

The counsel for Bihar contended that the High Court had granted bail without giving any reason considering the huge quantity of liquor recovered, and the very purpose of the Act will be defeated if the bail orders are nor set aside. He said that the accused were involved in the transport and sale of liquor.

Supreme Court expands the meaning and scope of "vulnerable witness"

While broadening the meaning of "vulnerable witness", the Court said that they will not be restricted to child witnesses alone, but also include all victims of sexual assault, spanning age and gender. It will also include witnesses suffering from mental illness, according to the Mental Healthcare Act, witnesses with threat perception and witnesses with speech or hearing impairment, or any other disability considered as vulnerable by the Court.

The ruling came from a bench of Justices DY Chandrachud and Surya Kant, during the hearing of a plea praying for protection of vulnerable witnesses.

Considering the need for creating a safe and hassle-free environment for vulnerable witnesses to record their evidence, the bench asked all High Courts to set up a Vulnerable Witness Deposition Centre (VWDC) scheme within two months. It also asked High Courts to set up a permanent VWDC committee and sought an estimate of the manpower needed for VWDCs in their respective states within three months. Training programmes to manage VWDCs and sensitise all stakeholders is crucial, the bench observed.

Supreme Court upholds bail for Deepak Kochhar in money laundering case

The Bombay High Court's decision to grant bail to businessman Deepak Kochhar, husband of ex-ICICI Bank CEO Chanda Kochhar, was upheld by the Supreme Court. Kochhar is an accused in the ICICI Bank-Videocon money laundering case. The plea against the bail from the Enforcement Directorate (ED) was dismissed by the apex court, but it kept the issues of law open to be decided in an appropriate case. The apex court said there was no reason to interfere with the order of the High Court. Kochhar was granted bail in March last year.

The ED is probing the matter based on a case registered by the CBI on alleged irregularities over loans given to firms of the Videocon Group. It was alleged that Chanda Kochhar had misused her official position to grant the loans and received illegal gratification in return. She was eventually sacked from the bank.

VENOMOUS TIMES

Historically, nationalism was centred around the Independence movement to fight foreign forces. But now it's built by instigating animosity against other religions through hate speeches and apps

By Abhinav Mehrotra

HATE speeches have seen an exponential rise in recent times. While the issue has been dealt with in the past through case laws and various provisions under the Indian Penal Code, 1860, and Article 19 (2) of the Constitution, there is a need for a more direct declaration. There have been reasonable restrictions under the purview of these laws such as "incitement to an offence", "defamation" or "security of the state", but obviously much more needs to be done.

This sentiment assumes significance in the light of recent controversial religious events held in Delhi and Haridwar where speakers allegedly made hate speeches and called for violence against

CALL FOR GENOCIDE
The alleged hate speech by participants at religious events in Haridwar (left) and Delhi called for violence against Muslims and Christians; (below) Yati Narsinghanand (above) and Waseem Rizvi, alias Jitendra Narayan Tyagi, have been arrested by the Uttarakhand police for making incendiary speeches at the Haridwar event

Muslims and Christians and waging a war scarier than the 1857 revolt. Similarly, the imprisonment of the developers of apps like Bulli Bai and Sulli Deals that created profiles of Muslim women and described them as "deals of the day" have highlighted the venom again the Muslim community.

The dangerous effects of the hate speeches at the Dharma Sansad or religious assembly in Uttarakhand led to a petition being filed in the Supreme Court by a former judge of Patna High Court, Justice Anjana Prakash, and journalist Qurban Ali. Notices were sent out to the state government, central government and Delhi Police.

The petition said that between December 17 and 19 at two separate events in Delhi held by the Hindu Yuva Vahini and in Haridwar by religious leader Yati Narsinghanand, open calls were given for the genocide of Muslims and use of weapons against them. To make matters worse, they were seen in a video laughing with a police officer, who they said will be "on our side".

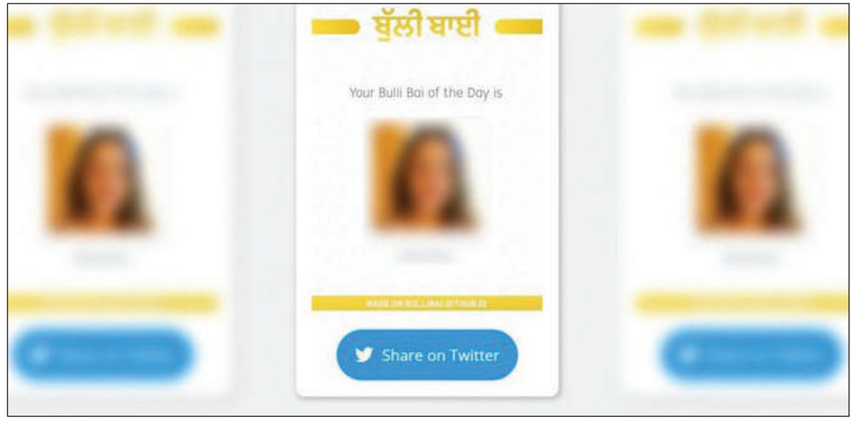
Another shocking incident was the development of apps which used photos of Muslim women and putting them up

for "auction". This led to a huge furore and nearly 4,500 people signing an open letter to Chief Justice of India NV Ramana, asking him to register a *suo motu* petition on the targeting of Muslim women through apps like "Sulli Deals" and "Bulli Bai".

The letter reads: "While the very action of downloading and posting pictures and private details of Muslim women, in both instances, was not only non-consensual and in violation of the right to privacy, it was clearly meant to degrade, dehumanize, vilify and demean Muslim women. 'Auctioning' women in this manner is a depraved attempt to commodify them and strip them of any personhood or dignity. This is a blatant violation of the very fundamental right to live with dignity and the right to bodily autonomy protected under Article 21 of our Constitution."

It stressed that the "public auction of Muslim women is an extreme form of vilification of Muslims reducing them to non-citizens and sub-humans. This only points to the utter moral bankruptcy in our society where communal elements openly target, bully and perpetuate ▶

The imprisonment of the developers of apps like Bulli Bai (right) and Sulli Deals that created profiles of Muslim women and described them as "deals of the day" have highlighted the venom again the Muslim community.



Screenshot of the Bulli Bai platform, Twitter

sexual violence against women with alarming impunity. Read along with the public calls for genocide on the streets of Delhi earlier last year, and at the Dharam Sansad in Haridwar more recently, it is evident that instances such as these are carefully strategized hate crimes pushing our country into a dark abyss to which there can be no turning a blind eye to anymore".

In this context, it is important to understand why India as a country, known for its secularist values, is now facing these attacks on its constitutional principles and what are the social and legal implications of such incidents.

The right to free speech and expression is a constitutional right under Article 19(1)(a) and is necessary to ensure free exchange of ideas in the absence of government regulation, specifically when it comes to diverse opinions and dissent. While an individual has the right to participate in democratic decisions that affect him, the line drawn through reasonable restrictions needs to be respected to maintain the security and integrity of those sections of people that are numerically lower in number.

So, there is a need to specifically understand what constitutes hate speech and hate crimes and what could be expected going forward in terms of the safeguarding of rights of groups and individuals who have been targets of such hideous campaigns.

In simple terms, hate speech is based on historical stereotypes or symbolism targeting minority communities based on characteristics of caste, religion, gender, etc. In a similar vein, from a sociological perspective, hate crimes can be understood as targeting victims based on their membership of a social group based on race, religion, sexual orientation, disability, class, ethnicity, nationality, age, sex or gender identity.

Nearly 4,500 people have signed an open letter to CJI NV Ramana, asking him to register a *suo motu* petition on the targeting of Muslim women through apps like Sulli Deals and Bulli Bai.

Further, a UNESCO report published in 2015 defined it as speech at "the intersection of multiple tensions and as the expression of conflicts between different groups within and across societies". Similarly, the TK Viswanathan Committee that also investigated the issue defined it as "hate speech must be viewed through the lens of the right to equality and relates to speech not merely offensive or hurtful to specific individuals, but also inciting discrimination or violence on the basis of inclusion of individuals within certain groups".

Coming to the legal side on these issues, the Indian Penal Code, 1860 under Sections 153A, 153B, 295A, 298, 505(1) and 505(2) aims to curb hate speech based on religion, ethnicity, culture or race. Under these sections, any form of speech that "promotes disharmony, enmity, hatred or ill-will" or "offends" or "insults" is liable to be punished. Even under the 267th Report of the Law Commission of India, it is based on similar criteria, i.e. an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious belief through any word written or spoken, signs, visible representations within the hearing or sight of a person with the intention to cause fear or alarm, or incitement to violence.

There are a plethora of cases that have dealt with these issues by the Supreme Court. To illustrate, in *State of Karnataka vs Praveen Bhai Thogadia*, the Supreme Court emphasised the need to sustain communal harmony to ensure the welfare of the people, whereas in the case of *Pravasi Bhalai Sangathan*, it underlined the impact hate speech can have on the targeted groups' ability to respond and how it can be a stimulus for further attacks.

From a comparative aspect, in countries like the US and the UK where a "clear and present danger" with imminent and direct cause must be established, Indian law provides a wider ambit. For example, in the US, free speech is "protected as an absolute and fundamental right under the Fifth Amendment". This protection extends to an expression like that of "xeno-phobia, racism and religious discrimination" until and unless it furthers "direct violence against an individual and/or a group".

In contrast, European nations place more emphasis on "civility and respect" such as in Germany's Basic Law of 1949 which says that "protection against insult" is a right and is also guaranteed in its First Article.

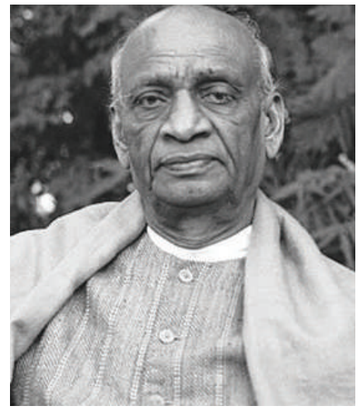
Coming to India, the core of the issue is that nationalism is now being built by arousing religious sentiments and instigating animosity against followers of other beliefs. Historically, the idea of nationalism was centred around the Independence movement where it was used as an ideology to unite against the foreign occupation. But at present, it is affecting the safety of our own citizens.

What needs to be understood is that it is from the formative stages in life of a child that the attributes of respecting the dignity of all communities must be incorporated through the educational system. Though present to some extent in our course curriculum, it is not in a comprehensive and detailed manner.

Twitter

DEMANDING LEGAL ACTION
AISA and other organisations stage a protest against hate speech in Haridwar outside Uttarakhand Bhawan in New Delhi

History talks about national unity for which leaders fought and struggled. However, there were also elements of alien enemies, beginning with Muslim rulers which unconsciously led to the belief that there has always been a Hindu nation constantly fighting against certain evil powers.



"...in the long run, it would be in the interest of all to forget that there is anything like majority or minority in this country and that in India there is only one community."
—Sardar Vallabhbhai Patel before the Constituent Assembly on May 25, 1949

In this regard, inspiration must be drawn from the statement of Sardar Vallabhbhai Patel before the Constituent Assembly on May 25, 1949. As he was presenting the report of the Advisory Committee on Minorities, he said: "If they really have come honestly to the conclusion that in the changed conditions of this country, it is in the interest of all to lay down real and genuine foundations of a secular state, then nothing is better for the minorities than to trust the good sense and sense of fairness of the majority, and to place confidence in them. So also it is for us who happen to be in a majority to think about what the minorities feel...But in the long run, it would be in the interest of all to forget that there is anything like majority or minority in this country and that in India there is only one community." ■

—The writer is a Lecturer at OP Jindal Global University and holds an LL.M in International Human Rights Law from the University of Leeds

RIGHTS OF THE CHILD

The Delhi Commission for Protection of Child Rights has initiated an inquiry into a slew of issues relating to children alleged to be in conflict with the law by setting up a panel. Experts say that the inquiry could lead to a better understanding of the challenges faced by families and children

THE Delhi Commission for Protection of Child Rights (DCPCR) has ordered a formal inquiry into the quality and effectiveness of legal services available to children in conflict with the law, their experiences with police, and challenges faced by them in securing bail or release. A panel has been constituted by DCPCR in this regard headed by former Supreme Court judge Madan B Lokur with three DCPCR members—Suneita Ojha, Sneha Singh and Ajay Verma.

The order, dated January 3, 2022, states that "The Delhi Commission for Protection of Child Rights in discharge of its functions under Section 13 (1-e), Section 13(1-i) and Section 13 (1-j) of the Commissions for Protection of Child Rights Act 2005 and in exercise of its power under Section 14 (1) of the Commissions for Protection of Child Rights Act 2005 initiates an inquiry through the order dated January 03, 2022." The order states that the panel shall look into following matters:

- Assessment of awareness of the legal proceedings and status of their cases/ inquiry among children alleged to be in conflict with the law and children in conflict with the law who are residing in various observation homes, place of safety and special homes, situated in the National Capital Territory of Delhi and duration of their stay in these institutions along with the reasons thereof;
- Identification of issues and challenges experienced by such children in securing bail or release (where applicable) and in securing leave, quality and effectiveness of legal services available to them and their experiences with the police;
- Demographic profile involving social, economic and educational status of the family of such children;
- Any other matter connected incidental to either or all of the above three.

The DCPCR also said that for matters of inquiry, members of the inquiry panel, individually or collectively, are authorised to:

(a) Visit the observation homes, special homes and place of safety with at least one day prior intimation, through the secretariat of this commission to the persons in-charge of concerned child care institutions;

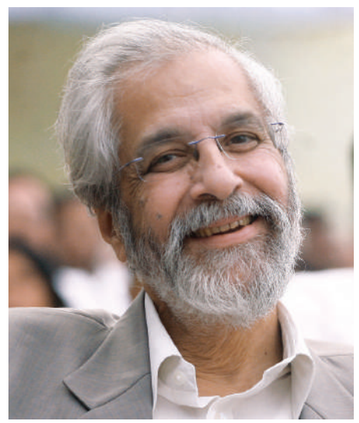
(b) Interact with and interview children without the presence of any staff and have access to their records (case files, reports, orders, etc.) available in the institution;

(c) Interact with persons in-charge and other officials of observation homes, special homes and place of safety, as the case may be, to obtain facts and information relevant for the purpose of inquiry;

(d) Visit and interact with the legal services advocates and family members of these children, if required for the purpose of inquiry;

(e) Inspect legal aid register, warrant files and any other documents or registers which are maintained at the institution; ▶

ASSESSING THE SITUATION
The panel will also look into legal proceedings of children in conflict with the law and residing in observation homes (below)



The expert panel set up by DCPCR to inquire into the effectiveness of legal aid available to children in conflict with the law is headed by former Supreme Court judge Madan Lokur and three DCPCR members.

Bharti Ali, director of HAQ: Centre for Child Rights, hopes that the inquiry and its findings will go a long way to provide proper legal aid to the children in conflict with the law and monitor the quality of legal services they get.

Senior Advocate Vrinda Grover said that the inquiry panel can provide an important evaluation of the implementation of the law and bring to the fore the lacunae and shortfall that need urgent redress.

(f) Photocopy or take pictures of any document through their mobile phones required for the purpose of inquiry;
(g) Any other document incidental to the work of the inquiry panel.

According to the order, the members of the inquiry panel shall file a confidentiality undertaking with DCPCR to ensure complete privacy of the children and the records and information accessed as part of the inquiry. The panel shall submit its report to DCPCR and shall undertake not to reveal or share the report, any part thereof or findings of the inquiry, to any entity or entities without the written permission of DCPCR.

The members of the inquiry panel shall submit their request for access to records maintained outside observation homes, special homes and place of safety to DCPCR only, which shall provide full secretarial assistance to the members of the inquiry panel, who shall reach out to DCPCR through an official designated for this purpose, in case of need of such assistance at any time and stage of the inquiry.

The order states that the members of the inquiry panel shall comply with the institution's child protection policy, sign the visitors' register, show their ID cards and this order as and when required by the institution. The institution may retain the copy of their identity documents, if it so wishes for its record purposes. All the persons in-charge and all other officials, including security staff, of the observation homes, special homes and place of safety are required to ensure and extend professional courtesy and cooperation to the members of the inquiry panel. The members of inquiry panel shall write a joint report based on their inquiry within five weeks of the issuance of the order.

Experts said that the inquiry could lead to a better understanding of the challenges faced by families and children. They opine that one can put in place lawyers to take up cases of children in conflict with the law, but at the same time, it is crucial to ensure that services required under the law are provided to families of such children. Bharti Ali, director, HAQ: Centre for Child Rights—a child rights NGO—said that legal aid for children requires that lawyers stay in regular touch with children, keep families updated about the developments in the case, and ensure that the child is not forced to plead guilty.

Ali said that an inquiry into the way the legal aid system works is happening for the first time. The findings of the inquiry can be used for strengthening the legal aid system. Ali further said that she hopes the inquiry and its findings will go a long way to provide proper legal aid to the children in conflict with the law, the lack of which is currently one of the major problems in the juvenile justice system. She also said that it is not so much that public defenders are not available for such children but there is currently no system to monitor the quality of services they provide. She added that many times children are not assigned legal aid for days on end when the police delay production before the Juvenile Justice Board, adding that another problem is that these children and their families are often unable to find the money to pay the bail bond and sureties.

Senior Advocate Vrinda Grover said that while the Juvenile Justice Act is a beneficial law designed to make sure that authorities act in the best interest of the child concerned, "the entire scheme stands nullified if those responsible under the law fail to strictly adhere to it, out of ignorance or indifference, jeopardising the fate of the child in conflict with the law". Grover said that the panel can provide an important evaluation of the implementation of the law and bring to the fore the lacunae and shortfall that need urgent redress. "I welcome this panel as an important step in the direction of regular monitoring and evaluation of the enforcement of the law and state's obligation towards safe-guarding children in conflict with the law who are residing in observation homes, place of safety and special homes situated in the National capital Territory of Delhi and duration of their stay in these institutions along with the reason," she said. ■

—By Adarsh Patel and India Legal Bureau

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OFFICE: A-9, Sector-68, Noida(UP)
Phone: +91-0120-2471400/6127900
Email: Contact@ilrf.in

Pregnant Pause

In a noteworthy judgment, the Delhi High Court allowed a woman to terminate her 28-week pregnancy as the foetus was suffering from defects. This was a departure from the earlier 24 weeks' limit for MTP

THE Delhi High Court on December 31, 2021, allowed a woman to terminate her 28 weeks' pregnancy while ruling that reproductive choice is an insegregable part of a woman's personal liberty enshrined in Article 21 of the Constitution.

The 33-year-old woman has been undergoing regular check-ups from the fifth week of pregnancy. From the ultrasonography report conducted during the 20th week of gestation, it was revealed that there was a cyst in the left lateral ventricle of the foetus. However, as the foetus was only 20 weeks old, foetal echocardiography was not performed. On completion of 24 weeks, an Echo-Doppler test was done and various anomalies were found in the heart of the foetus, including absent pulmonary valve syndrome, presence of pulmonary stenosis (narrowing of the valve between the lower right heart chamber and lung arteries) and regurgitation with narrow pulmonary valves, dilated pulmonary artery and a large ventricular septal defect (where there is a hole in the wall separating the two lower chambers of the heart) with overriding of the aorta.

Thereafter, the woman consulted many doctors, including paediatric cardiologists, and as per the last medical, infants born with Tetralogy of Fallot (a group of four congenital heart defects) have a 50% chance of survival in the first year of birth and even if they do, repeated surgeries have to be carried out and their success depends on the stimuli of the baby to the environment. As the permissible limit of 24 weeks under the Medical Termination of Pregnancy (MTP) Act, 1971, as amended by the Medical Termination of Pregnancy (Amendment) Act, 2021 was over, the woman approached the High Court seeking a direction to undergo MTP.

The High Court sought an expert body's opinion from AIIMS on MTP of a 28-week pregnancy on account of certain abnormalities in the foetus. The AIIMS expert body said that there was a major foetal abnormality in the form of a rare congenital heart disease. The report further noted that the chances of a successful outcome was 80% if operated in time and optimally managed with regular follow-up. The report further stated that the child would require follow-up in cardiology and cardiac surgery 2-3 times per year initially and annually thereafter. The report noted that the mother was highly stressed and was not in the correct frame of mind to continue the pregnancy.

EMPOWERING WOMEN
Abortion in India has been legal under various circumstances for the last 50 years with the MTP Act in 1971

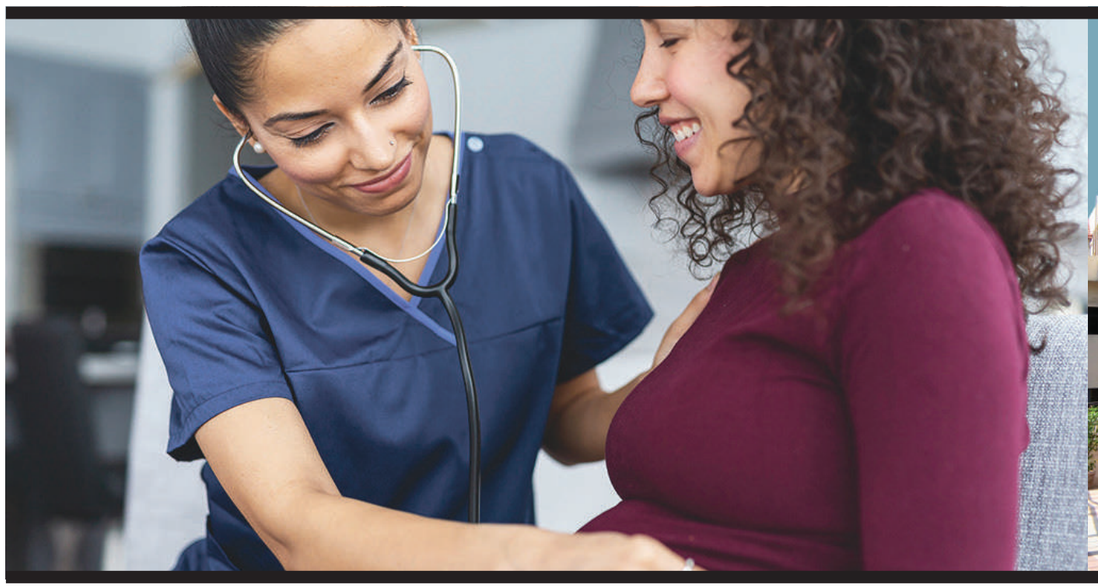
A single bench of Justice Jyoti Singh then agreed with the contention of the woman that continuing the pregnancy would cause grave injury to her mental health. "Reproductive choice is a facet of reproductive rights of a woman and a dimension of her 'personal liberty', enshrined in Article 21 of the Constitution of India and thus the Petitioner cannot be deprived of the freedom to take a decision to continue or not to continue with the pregnancy, in the backdrop of the foetal abnormalities brought forth in the Medical Opinion of the Board," observed the bench.

> Pregnancies can now be terminated up to 20 weeks on the advice of one doctor and special categories of women can seek termination up to 24 weeks. Moreover, women/couples can seek termination any time during the gestation period for foetal anomalies, as diagnosed by medical boards.

In the past, there have been cases where women have asked for MTP beyond the stipulated period. In the case of *Sarmishtha Chakrabortty vs Union of India, (2018),* though the pregnancy had continued for 25 weeks, on account of the opinion of the Board that the child, if born alive, would have to undertake complex cardiac corrective surgeries, stage by stage, which was prone to mortality, the Supreme Court allowed the prayer of the woman for MTP.

In *Meera Sanosh Pal vs Union of India, (2017),* a woman who was in the 24th week of her pregnancy, filed a petition before the Supreme Court with the plea to undergo MTP. The board was of the opinion that continuation of the pregnancy would not only result in grave injury to the physical and mental health of the woman but the foetus would not be able to survive "extra-uterine life" due to abnormalities. Therefore, the Supreme Court directed that the woman could undergo MTP as per the provisions of the MTP Act.

In another case, the Telangana High Court on October 11, 2021, laid down that the life of the foetus cannot be placed at a higher pedestal than that of the mother. Justice B Vijaysen Reddy, while directing the hospital to terminate the pregnancy with all precautionary measures within 48 hours, observed that constitutional courts have the power to do so even when the length of pregnancy is beyond the statutory limit of 24 ▶



Justice Jyoti Singh of the Delhi High Court said that reproductive choice is a facet of reproductive rights of a woman and a dimension of her personal liberty enshrined in Article 21 of the Constitution of India.

Twitter

Indian dentist Savita Halappanavar died in Ireland after the medical staff at University Hospital Galway denied her request for abortion on legal grounds. In the wake of a nationwide outcry over her death and international controversy, the abortion law in Ireland was liberalised.

weeks as per the MTP (Amendment) Act, 2021.

In a judgment of the Bombay High Court in *XYZ vs State of Maharashtra, 2021*, on October 6, 2021, it allowed the petitioner to undergo MTP, as continuation of the pregnancy could cause grave injury to her mental health.

In *Xxx vs Union of India, 2021*, the High Court of Kerala allowed the termination of pregnancy even when the period of gestation had reached 26 weeks, taking into account the traumatic experience of the victim and the possible genetic disorders of the unborn child. It held that when the period of gestation exceeds the period prescribed in Sections 3 and 4 of the MTP Act, 1971, medical termination can be carried out by an order of a court.

It is pertinent to mention a similar case in Ireland which ended tragically. Savita Halappanavar, a pregnant dentist of Indian origin, died from sepsis due to medical negligence. The medical staff at University Hospital Galway denied on legal grounds her request for an abortion. In the wake of a nationwide outcry over her death, voters passed a landslide Thirty-Sixth Amendment of the Constitution, which repealed the Eighth Amendment of the Constitution of Ireland and empowered the legislature to legislate for abortion. It did so through the Health (Regulation of Termination of Pregnancy) Act 2018, which was signed into law on December 20, 2018.

Section 3 of the MTP Act, 1971, deals with scenarios where pregnancies may be terminated by registered medical practitioners. As per the MTP (Amendment) Act, 2021, the upper limit for this procedure is 24 weeks as opposed to 20 weeks, which was the position before the amendment.

Abortion in India has been legal under various circumstances for the last 50 years with the MTP Act in 1971. Before that, abortion was criminalised under Section 312 of the Indian Penal Code, 1860, describing it as intentionally "causing miscarriage". Except in cases where abortion was carried out to save the life of the woman, it was a punishable offense and criminalised whoever voluntarily caused a pregnant woman to miscarry. They faced three years in prison and/or a fine, and the woman availing of the service faced seven years in prison and/or a fine.

The MTP Act 1971, was amended in 2002 to facilitate better implementation and increase access for women, especially in the private health sector. The government took cognisance of the challenges faced by women in accessing safe abortion services, and in 2006, constituted an expert group to review the existing provisions of the MTP Act to propose draft amendments. On January 29, 2020, the government first introduced the MTP Amendment Bill 2020, which was passed in the Lok Sabha on March 17, 2020. A year later, the Bill was placed in the Rajya Sabha and passed on March 16, 2021 as the MTP Amendment Act 2021.

Under the MTP Act 1971, the time limit for terminating pregnancy was up to 12 weeks on the advice of one doctor and up to 20 weeks on the advice of two doctors. Moreover, post 20 weeks, terminating a pregnancy was not permitted. Now pregnancies can be terminated up to 20 weeks on the advice of one doctor and special categories of women can seek termination up to 24 weeks. Moreover, women/couples can seek termination any time during the gestation period for foetal anomalies, as diagnosed by medical boards.

The upper limit for termination of pregnancy with doctors' opinion has been extended from 20 weeks to 24 weeks for the following special categories: survivors of sexual assault or rape or incest; minors; change of marital status during the pregnancy (widowhood and divorce); women with physical disabilities; mentally ill women; foetal anomalies that have substantial risk of being incompatible with life or if the child may suffer from such physical or mental abnormalities to be seriously handicapped and women with pregnancy in humanitarian settings or disaster or emergency.

So laws have to be changed as per society's norms and as long as there is no threat to life. ■

—By Shivam Sharma and India Legal Bureau

LAYING DOWN THE LAW

In order to strengthen its border control and protection, China has adopted a controversial Land Border Law of the People's Republic of China 2021 which came into effect on January 1, 2022. The law has serious repercussions for India

By Dr Abhishek Atrey

China's new law on land borders comes at a time when the border standoff in eastern Ladakh remains unresolved. The law has created an impression that China may have been thwarting further negotiations on the standoff for this new law to come into force.

INTERNATIONAL relations and international law are complementary and corresponding to each other. Hence a minor change in laws with respect to another country has major repercussions. Recently in an endeavour to strengthen its border control and protection China adopted a controversial Land Border Law of the People's Republic of China 2021 in 31st meeting, dated October 23, 2021, of the Standing Committee of 13th National People's Congress, which is the top legislative body of China. This law came into effect on January 1, 2022.

China shares its 22,000 km long border with more than 14 nations, including India, Pakistan, Afghanistan, Russia and North Korea and it has a conflict with nearly all of them. The country has a prominent position in the present global order and the neighbouring nations are bearing the cost of its growth. Chinese foreign policy has always been expansionist in nature and recently it came up with three contentious laws which further indicates its aggressive approach to its future expansion. These laws are: the Land Boundary Law, Maritime Law and China Coast Guard Law.

If we look in the Indian perspective, since May 2020, China has been involved in a protracted face-off with India along their disputed border. While the new law has stimulated the speculations as to whether it would be used to justify a more assertive Chinese posture, it clearly goes beyond that specific dispute and speaks to a host of problems that are camouflaged as Beijing strives to secure its land border in the midst of growing uncertainty in its neighbourhood.

Twitter

A SINISTER MOVE?
The law declares that China will at any cost protect its territorial sovereignty and land border security while seeking a peaceful resolution to issues through discussions

TRACKING THE ROOTS

The Indo-China border dispute is not a new phenomena, rather it dates back to the nineteenth century. In fact, the first treaty was signed between the independent forces of the two nations which came into effect in 1842. Since then, several attempts have been made to demarcate the boundary between the two nations. Due to this on July 3, 1914, at Simla, Tibet and India signed the Simla Convention that gave birth to the McMahon Line which separated Tibet from India in the eastern sector. Then in 1954, another historic agreement, the Panchsheel Treaty, was signed between the two countries. Despite these agreements, the efforts to resolve the dispute failed and as a consequence the Indo-China war occurred in 1962. It was during this time that the People's Liberation Army of China annexed parts of India's Ladakh region. In order to establish peace and tranquillity across the border, several other agreements in 1993, 1996, 2003, 2005, 2012 and 2013 have been signed. But the tension at the LAC remains unresolved.

THE SIMLA ACCORD AND THE INTERNATIONAL LAW

The Simla Accord of 1914 was a result of negotiation amongst the representatives of British India, the Republic of China and Tibet to define the boundary between Tibet and British India and also between Tibet and China which is known as McMohan Line. But China, despite participating in the negotiation, declined to sign the convention and the British and the Tibetan *charge d'affaires* signed it as a bilateral declaration. As a result, China was denied any privileges. Thus China's refusal to acknowledge the Simla Accord as a legally binding treaty originates from this. Also, no Chinese central government ever ratified the treaty. In addition to this, China has also lamented that the Accord was a product of British policy of aggression against the Tibet Region of China, and therefore, an unequal treaty.

However, all the claims from Beijing of not ratifying and refusal to sign the declaration by the Chinese ambassadors fail on two grounds: Firstly, the crumbling of talks happened on the issue of ▶

settlement of the border between Tibet and China and not Tibet and British India. Following that, a bilateral agreement between Tibet and British India came into being which duly defined the boundary between both signatories. Then the Chinese approval was not required to demarcate the boundary between Tibet and British India as Tibet had control over its foreign affairs in 1914. Secondly, as per the Article 11 of the Accord, the treaty was to take effect from the very date it was signed and no explicit provision of the treaty required ratification.

The most questionable part about the Chinese contentions even if we accept them is the subsequent action of integrating the updated map in official records and successive conduct of not raising the dispute for 45 long years i.e. until 1959 after the signing of the treaty debunks the Chinese claim. We may understand this with the help of the doctrine of acquiescence, it requires the acquiescent party to raise any objection to the infringement of its rights and failure to do so; it can be held against it if the objection is raised after long term acquiescence. For instance, in the Pedra Branca islands dispute case, Singapore's central argument was that for 130 years the Singapore's exercise of sovereignty over the islands was not challenged by Malaysia. It was accepted by the ICJ and the Sovereignty over the islands was conceded to belong to Singapore.

Another contention advanced by China that the treaty was unequal and a result of aggressive policy adopted by the British against China also seems to fail because a party cannot invoke the principle of inequality to invalidate the treaty if there is no coercion or use of force. The Simla Accord became operational after comprehensive negotiations which spanned over a period of six months and it was based on an explicit authorization from the Chinese government which proves that the Chinese government was not intimidated from the British and acted without any inhibitions.

THE PANCHSHEEL AGREEMENT

The Panchsheel Treaty is a much revered document. It has a set of Five Principles of Peaceful Coexistence enshrined in the preamble to the "Agreement on trade and intercourse between Tibet Region of China and India". The first principle of the treaty talks about the mutual respect for one another's territorial integrity and sovereignty. The treaty was signed after conscientious negotiations where all aspects of Indo-China relations were talked about but the border dispute was not raised, thus putting the then prime minister under the impression that no border dispute existed between the two countries. Concurrently, China termed the agreement more as a political document for bargaining bilaterally but at the same time not as an agreement that would be subjected to interpretations by international courts. But the Chinese government's idea of negating the agreement does not hold ground in international law as the oral declarations made by government functionaries have been held to be valid and binding. For example, in the Eastern Greenland case, an oral statement given by Norway's foreign minister was considered by the Permanent Court of International Justice to be binding on Norway.

The Chinese government's idea of negating the Panchsheel Treaty, signed between India and China in 1954, does not hold ground in international law as the oral declarations made by government functionaries have been held to be valid and binding.

PANCHSHEEL PRINCIPL
OF
MUTUAL CO-EXISTENCE DISCUSSED UP
1. MUTUAL RESPECT FOR EACH OTHER'S TERRI
INTEGRITY AND SOVEREIGNTY.
2. MUTUAL NON-INTERFERENCE IN EACH OTHER'S INTERNAL AFFAIRS
3. EQUAL AND MUTUAL BENEFIT WORKING RELATIONSHIP
4. MUTUAL NON-AGGRESSION
5. PEACEFUL CO-EXISTENCE
APRIL 28 Th. 1954

THE NEW LAW ON LAND BORERS

The New Law on Land Borders has 62 Articles and Seven Chapters. The law aims at the protection and utilisation of China's land border territories. It was passed by the Standing Committee of the National People's Congress. It declares that the People's Republic of China's sovereignty and territorial integrity are sanctified.

The law requires the state to take steps to strengthen border defence and support economic and social development in border areas and also improve public services and infrastructure, encourage and support people's lives and work, promote coordination between border defence and social and economic development. Thus, Beijing appears to be emphasizing its determination to resolve border conflicts on its own terms by enacting this new law. The law declares that China will uncompromisingly protect territorial sovereignty and land border security while continuing to seek a peaceful resolution to issues through discussions.

The law specifies that the People's Liberation Army (PLA) and the paramilitary People's Armed Police (PAP), both under the command of the Central Military Commission, will bear the major responsibility for safeguarding the land border, resisting armed invasion, and responding to major contingencies, thereby streamlining the division of labour among various bureaucracies, including the foreign ministry, the public security ministry, and the customs and immigration administrations. Also, it allows police officers to use police tools and firearms against intruders who use violence to resist imprisonment and endanger other people's lives and property.

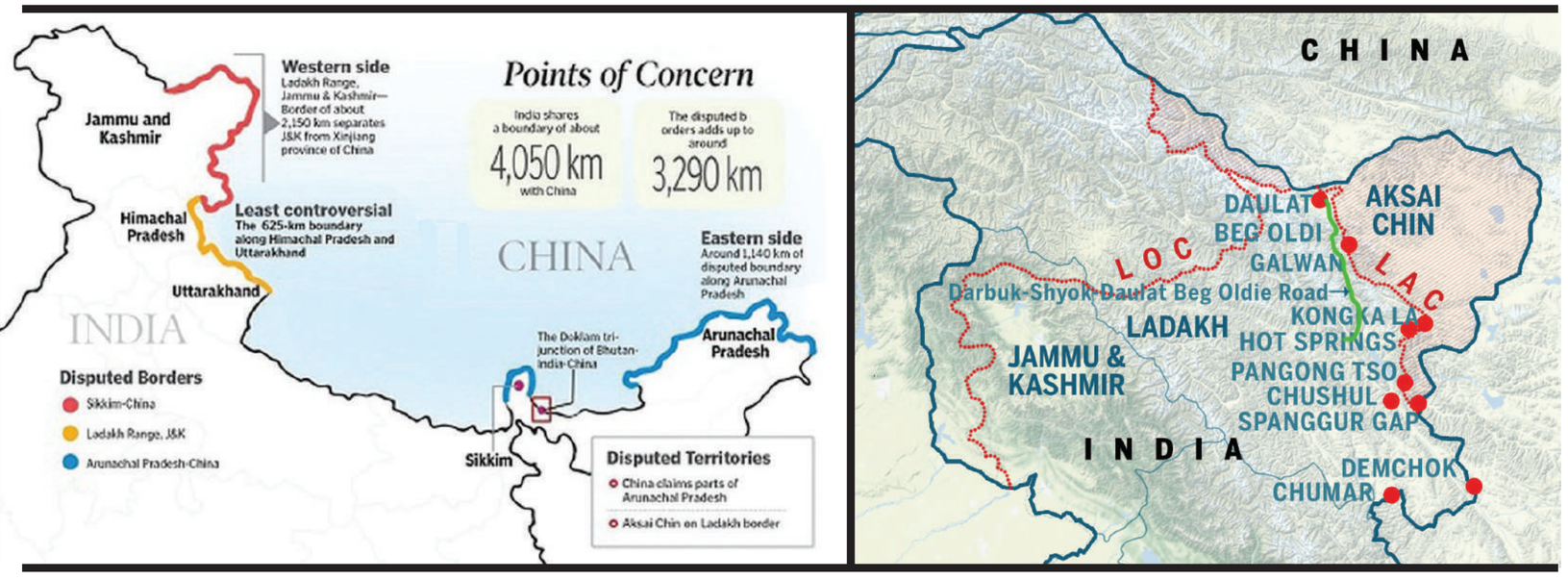
It also allows agencies to work with neighbouring countries to confront terrorism, separatism, and religious extremism. As per the newly inserted condition, local governments in border areas must now contribute resources to strengthen the formation of mass defence units to support border defence tasks. According to Chinese security analysts, the concept of "mass defence" for borders refers to enlisting local inhabitants to help with missions such as data collecting, order maintenance, sovereignty, and territory defence.

The law lays forth four scenarios that could result in border closures, port closures or other emergency measures which include the following:

- At the time of war or armed conflict on China's periphery thereby endangering the security and stability of its borders; or
- When an incident poses a serious threat to national security or the lives and property of border people; or
- At the time of natural calamity, public health incident, or nuclear, biological, or chemical contamination which may put the border area in jeopardy; or
- Any other situation which may have a significant impact on the ▶

THE REAL PICTURE

The map below shows details of the border between India and China and the disputed areas along the Line of Actual Control in Ladakh



land border and the security and stability of border regions.

WHY CHINA CAME UP WITH THIS LAW

It emerges that there are several factors which led to China's move? Firstly this law reflects Beijing's renewed concerns over the security of its land border while it squares up to a good deal of unsettled disputes on the maritime front. The confrontations on Sino-Indian borders in recent years may have reminded Beijing that as a classic land-sea power, China must always ready itself to cope with threats in both the continental and maritime domains. Also the Covid-19 pandemic has underlined the fact for Beijing to exert greater control over its penetrable land border. The law also reflects Beijing's thinly-veiled worries about the stability of its hinterland bordering Central Asia as the withdrawal of the US forces and Taliban takeover aggravated Beijing's concerns that Afghanistan may become a hotbed for terrorism and extremism that could spread to Xinjiang.

The Indo-China border dispute has now turned at least 65 years old with no significant headway in defining the border. Other mechanisms to resolve the dispute need to be considered.

HOW DOES IT CONCERN INDIA

The law is not made primarily for India but at the same time the implications cannot be overlooked. China and India share a disputed border which covers 3,488 km along the LAC which happens to be the third longest among China's 22,457 km land boundaries with 14 countries after the borders with Mongolia and Russia. Besides India, Bhutan (477km) is the only other country with which China has a disputed land border. This new land border law has given a reason for doubt and skepticism that China may have been thwarting further negotiations on the standoff in eastern Ladakh for this new law to come into force. India hoped that China would agree to disengage from Patrolling Point 15 in Hot Springs which it did not. The meeting did not even result in a joint statement as had been happening for earlier meetings. The date for the next meeting is still awaited amid concerns that the Chinese delegation can use the new law to try to boost their existing positions. Apart from PP15, China is blocking Indian troops from accessing its traditional patrolling limits—PP10, PP11, PP11A, PP12 and PP13 in Depsang Plains. Also, certain "so called civilians" have pitched tents on the Indian side of the LAC in Demchok and are refusing to vacate it. Another sticking point could be that the new law prohibits construction of permanent infrastructure close to the border without China's permission. Both India and China have been building new roads, bridges and other facilities faster since the standoff began; in fact, China had objected to India's workers even before.

There is a divided opinion on the new law that China has come up with. Some experts believe that the new law will make China stand by on the ongoing stand-off as well as for resolution of the larger boundary issue. Others feel the new law is only a tool China government will use if it wants as its actions have been aggressive even before this law. China has been building well-off border defence villages across the LAC in all sectors and the new law encourages this move which may be an issue of serious concern for India in future.

To conclude, the Indo-China border dispute has now turned at least 65 years old with no significant headway in defining the border. Even the most rudimentary task of exchanging maps to understand the differing perception of the two nations with respect to the LAC has not been concluded. However, India's policy has always been not to get intervention of any third country in its bilateral disputes with neighbouring nations, although the prospects of a resolution secured through bilateral arrangements look improbable. Other mechanisms to resolve the dispute need to be considered. One such recourse could be to make use of a third-party dispute settlement mechanism. The third-party dispute settlement mechanism allows a party that is external to the dispute to help the disputants reach a settlement. A combined reading of Article 33(1) and 33(2) of the UN Charter authorises the UN Security Council to call upon the parties to a dispute to resolve their differences through means stated in Article 33(1) which includes third-party means. In the past, third-party interventions in dispute settlement have given positive results. The Rio Protocol of 1942 was signed by the governments of Peru and Ecuador on which Brazil, Argentina, Chile and the United States signed as guarantors. This agreement led to the successful demarcation of 95% of the disputed border by 1946. Similar instances include the role of the Pope and Algeria in successfully adjudicating the Argentina-Chile Beagle Channel Dispute and the Iran hostage's crisis, respectively. ■

—The writer is Advocate On Record, Supreme Court of India

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The Threat to American Democracy Grows

Lawyers keep telling judges that former president Donald Trump has immunity regarding everything that happened on January 6. US District Judge Amit Mehta wasn't buying it and called the charge "simply inappropriate". The judge was dealing with the meaning of Trump's refusal to call off the rioters for 187 crucial minutes during the insurrection as they stormed the Capitol building

By Kenneth Tiven in Washington

WITH each passing day, it becomes clearer how determined the Donald Trump faction of the Republican party was to overturn a presidential election to destroy 250 years of democracy and keep their leader in the White House. Lawyers keep telling judges that Trump has immunity regarding everything that happened on January 6. The latest is Attorney Jesse Binnall, who tried the blanket immunity claim for anything "said or done while president" before a federal district court this past week.

US District Judge Amit Mehta wasn't buying it. "So the president, in your view, is both immune to inciting the riot and failing to stop it?" Mehta asked this in a civil suit brought by Capitol Police officers hurt in the insurrection battle. He was dealing with the meaning of Trump's refusal to call off the rioters for 187 crucial minutes during the insurrection as they stormed the Capitol building. Binnell intimated that the judge was holding Trump to a different standard than he would hold a Democrat. Mehta called the charge "simply inappropriate".

Twitter

Judge Mehta was born in Patan in Gujarat. He went to college in the US and graduated from the University of Virginia School of Law in 1997. He was nominated for the federal judiciary by President Barack Obama.

It was Metha who ruled in 2019 that the accounting firm Mazars must release financial records regarding president Trump from before his time in office. He wrote then that "history has shown that Congressionally-exposed criminal conduct by the president or a high-ranking executive branch official can lead to legislation. It is simply not fathomable that a Constitution that grants Congress the power to remove a president for reasons including criminal behaviour would deny Congress the power to investigate him for unlawful conduct—past or present—even without formally opening an impeachment inquiry."

ALLEGING SEDITION
Former Florida Congressman Alan Grayson said that Trump's rally speech on the day of Capitol riots (left) was an attempted coup

Donald Trump's lawyer Jesse Binnall (left) tried the blanket immunity claim for anything "said or done while president" before a federal district court but US District Judge Amit Mehta (right) did not buy it. "So the president...is both immune to inciting the riot and failing to stop it?" he asked.

Meanwhile, the House Investigating Committee indicated it is also looking at state-level efforts to overturn the vote that put Democrat Joe Biden in the White House. We now learn that in several states Trump supporters fabricated election certificates submitted for the electoral college vote. This happened in Michigan and Arizona. Sticklers for authenticity in Arizona, they affixed the state seal to the filing. The national archivist rejected the false certificates and alerted the secretaries of state.

Unlike the secrecy surrounding progress in the Robert Mueller probe of Trump's 2016 election, the House Committee continuously reveals in a number of formal and informal ways what it is finding. Apparently evidence suggests the role of Republicans in Congress to pressurise state officials to find votes for Trump.

The Committee issued three more subpoenas, this time for documents and testimony from Andy Surabian and Arthur Schwartz, political strategists communicating with Donald Trump, Jr., and Kimberly Guilfoyle about the morning rally on the Ellipse that ignited the insurrection. The third went to Ross Worthington who helped write Trump's rally speech. Invitations to several Republican Congressmen to appear voluntarily before the Committee have been rejected. Not a surprise and subpoenas could be next. All of this is keeping lawyers busy arguing for and against in court.

Unlike the secrecy surrounding progress in the Robert Mueller probe of Trump's 2016 election, the House Committee continuously reveals in a number of formal and informal ways what it is finding.

In 2015 in the run-up to the 2016 election, Republicans began an "investigation" into the death of an American diplomat in Libya. The Benghazi hearings were designed to denigrate then Secretary of State Hillary Clinton for the Benghazi incident. Republicans had her appear in a hearing which lasted 11 hours. Clinton was respectful but her appearance in October, 2015 had the intended negative effect on her as a presidential candidate.

President Joe Biden and Vice President Kamala Harris went to the district of the late Representative John Lewis, the Georgia Congressman for whom one of the voting rights bills before the Senate is named to make the case for changing the filibuster rule. This archaic rule, which is not in the Constitution, allows a Senator to object to a bill and stop any vote on it. That can be overridden with 60 votes in the 100 seat US Senate but with membership split 50/50 this is, in reality, unobtainable. The result is that many issues which need attention die rather than getting bipartisan cooperation for a solution.

Former Florida Congressman Alan Grayson is running to get his seat back. His colourful language and poster art enlivened many debates in the House of Representative in the past. Part of a tweet he recently sent, suggests he still speaks with a sharp voice. Referencing the rally speech on January 6, he quotes the former president: "You'll never take back our country with weakness. You have to show strength, and you have to be strong.... We fight like Hell and if you don't fight like Hell, you're not going to have a country anymore."

Grayson put it this way: "That's an attempted coup. It is a conspiracy against the United States. It is sedition. It is treason. The reason that we have a government is to protect US from people like THEM. And the reason why we have prisons is to put people like them inside. A year later, only 74 of those traitors have been sentenced. And they are just the small fry, like the one who defecated on the Capitol's marble floors. Meanwhile, the ones who wear coats and ties go unpunished."

Quoting a Bob Dylan lyric from *Hurricane*, he added: "All the criminals, in their coats and their ties, are free to drink martinis, and watch the sun rise." ■

— The writer has worked in senior positions at The Washington Post, NBC, ABC *and* CNN *and also consults for several Indian channels*

THE FLIGHT OF PEGASUS

The apex court took the right step to order a probe on whether the government used the spyware to peep into the lives of citizens in the garb of national security. Enactment of a law on surveillance is the need of the hour

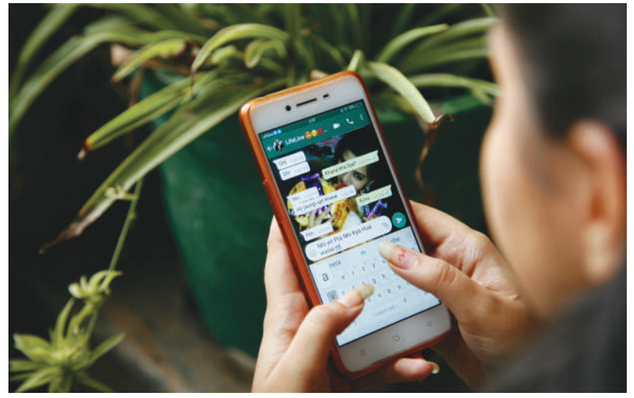
By Professor Pallavi Gupta and Professor NK Bahl

EVERY nation craves to protect its core values to enable its people to lead their lives in a free and secure manner, according to their shared common beliefs by preserving their national identity and sovereignty. National security is an umbrella under which core values are well protected and promoted through application of a well thought out strategy. In other words, national security is a state where our most cherished values, beliefs, our democratic way of life, our institutions of governance, our unity, welfare and well-being as a nation are permanently protected. Foreign invasions, terrorists, unwanted viruses and softwares peeping into our privacy may be threat to national security. Pegasus is one such software.

National security is the defence and security of a nation, including its citizens, economy and institutions. Has the security of the nation really been affected by violation of privacy through a spyware like Pegasus or is national security used to invade into the privacy of an individual, especially in the absence of a law?

Justice *KS Puttaswami vs Union of India* (2017) was a breakthrough judgment of the Supreme Court wherein the right to privacy was upheld as an intrinsic part of the right to life. A nine-judge bench unanimously held that right to privacy was a constitutionally protected right in India. This case was filed by a retired judge of the High Court challenging the government's proposed Aadhaar scheme for a uniform biometric based identity card which would be mandatory for access to government services and benefits.

So what is Pegasus? Pegasus in Greek mythology is a winged horse that sprang from the blood of the Gorgon Medusa as she was beheaded by the hero, Perseus. Subsequently, Bellerophon attempted to fly with Pegasus to heaven but was unseated and killed. Pegasus ultimately could not make it to heaven and instead, became a constellation in the northern sky. The moral of the story is to avoid hubris, which may be defined as overweening presumptions that leads a person to disregard the divinely fixed limits on human actions in an ordered cosmos.



A BREAKTHROUGH VERDICT
(Above, L-R) The SC said that the right to privacy is a fundamental right after the Aadhaar scheme was challenged; Pegasus can stealthily infiltrate into any smartphone

On the petition of N Ram and Sashikumar, the Supreme Court took the right step in checking the flight of the modern-day Pegasus. The order of inquiry by the Court whether the government purchased the Israeli spyware Pegasus and used it to access private information on the mobiles of citizens must be acclaimed. The State cannot get a free pass every time in the garb of national security to violate the fundamental right to personal liberty and privacy of its citizens by orchestrated snooping through the Pegasus spyware.

The right to privacy and Pegasus appear to be the antithesis of each other because the latter undermines privacy. Pegasus can be covertly installed on mobile phones running with the IOS and android versions. End to end encryption is a technology that scrambles messages on your phone and unscrambles them only on the recipient's phone. This means that anyone who intercepts the messages in between can't read them. This kind of encryption is good for protecting the privacy of an individual. Governments of a few countries do not like this liberty because it makes it difficult for them to spy on criminals, terrorists, dissidents, protesters and journalists.

Pegasus can stealthily enter a smartphone and gain access to its camera and microphone. It is designed to infiltrate such devices and turns them into surveillance devices. Once this spyware worms its way into a mobile phone, it can convert it into a 24x7 surveillance device. Pegasus can track a mobile's location by tracking cell signals from a cell tower transceiver like a stingray device. Wi-Fi and Bluetooth signals can also be used to track the mobile phones. Consequently, the keeper of it can be traced.

The stand of the spyware selling company that it sells Pegasus only to governments for the purpose of tracking criminals, terrorists and law enforcement works. The company does not disclose its clients. How to check the misuse of the software in such a scenario?

The earlier version of Pegasus was installed on smartphones through vulnerabilities in commonly used apps or by spear-phishing, which involves tricking a targeted user into clicking a link that is secretly installed in the software. Pegasus spyware can also be installed over a wireless transceiver located near a target. Nowadays, Pegasus can be installed on smartphones by just giving a missed call on WhatsApp. This means that this latest version of Pegasus does not require the user to do anything, and it amounts to zero-click-exploitation of the user.

After installation, Pegasus can harvest any data from the smartphone and transmit it back to the attacker. It can steal photos, videos, recordings, location, communications, web searches, passwords, call logs and even social media posts. Pegasus also has the capacity to activate cameras and microphones for real time surveillance without permission or knowledge of the user.

In India, the Pegasus project investigations alleged that the spyware was used on ministers, Opposition leaders, political strategists, journalists, activists, Supreme Court judges, religious leaders and administrators like Election Commissioners and heads of CBI, etc.

Based on the petition, the Supreme ▶

Court appointed a three-member panel of cyber experts to probe the alleged use of Pegasus for surveillance, saying that every citizen needs protection against privacy violations and mere invocation of "national security by the state" does not render the Court a "mute spectator". Former Supreme Court judge, Justice RV Raveendran was urged to oversee the functioning of the three-member panel. The appointment of this fact-finding committee appears to be a necessity in the present circumstances.

In a democratic country governed by the rule of law, indiscriminate spying on individuals cannot be allowed except with sufficient statutory safeguards by following the procedure established by law under the Constitution.

The violation of fundamental rights is a matter of serious concern. If the government is acting in accordance with the law of the land, then it is ok, otherwise its actions are bound to be condemned. National security cannot be the answer every time. There are reports that the spyware was purchased by official agencies, and at the same time, it was used to access personal information from the mobiles of certain individuals, who approached the Supreme Court for violation of their privacy. The answer was not coming from the government.

The SC appointed a three-member panel of cyber experts to probe the alleged use of Pegasus for surveillance in India. Justice RV Raveendran was urged to oversee the functioning of the panel.

The government might be justified in its right to withhold this information on the ground that its disclosure would compromise national security. The important point is that if the government is not willing to make disclosure before the Supreme Court citing confidentially, it would be very surprising if the committee will be able to make much headway and succeed in accomplishing its purpose.

Why was the Supreme Court obliged to pass such an order of appointment of a fact-finding committee? The probable answer appears to be that there is no law which could regulate the surveillance for lawful purposes through a fair and reasonable procedure. In the absence of any such law, the surveillance is ordered and executed through decisions of the bureaucrats, which patently remains outside the pale of law. Secondly, whenever a writ is filed before the court, it is bound to balance the right of privacy of the individual vis-à-vis national security. Judges are bound to apply their discretion while balancing the rights and national security; intelligence gathering will depend upon the subjective views of various judges.

At the same time, the outcomes are bound to be governed by the thinking of the judges, which may be pro-liberty or pro-security. These orientations may have their own merits, but neither the appointment of the fact-finding committee and gathering of facts, nor the foundation of right to privacy can function in such an ad-hoc manner.

Moreover, constitutionally, surveillance through Pegasus can never be a license in the hands of the government to peep into the personal life of the individuals. But fear and apprehensions are created by executive dictates in the absence of proper legislation. Surveillance and intelligence gathering have to be done in accordance with procedure established by law. Such a law will ensure responsible investigations and enjoy the confidence of the public at large.

It is also suggested that accountability of the investigating officers should also be fixed by law so that they work sincerely. All said and done, kudos to the Supreme Court for taking a bold step in checking the flight of the modern-day Pegasus. But the enactment of legislation for lawful surveillance through programmes like Pegasus is the need of the hour. ■

—Professor Pallavi Gupta is HoD, JEMTEC School of law, Greater Noida, and Professor NK Bahl is a former District & Sessions judge, UP

MAJOR DISCLOSURE
Israel's NSO group that owns Pegasus said that it is sold only to government clients

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Media and the Judiciary

The Chief Justice of India, NV Ramana, recently said that only by recognising that the media and the judiciary are sailing together in "Mission Democracy" can we respect and support each other

By Kriti

WE are residing in a democratic country, a "holding together" federation to be more precise. The Chief Justice of India, NV Ramana, recently expressed concern (while addressing journalists at a journalism awards function at the Mumbai Press Club) over the current battle between the media—the fourth pillar of our democracy—and the judiciary, the ultimate symbol and means of getting justice. Indian democracy cannot sustain, even if one of the pillars is attacked or its strength weakened.

The media is often seen voicing their criticism against the government as well as the judiciary. Media is the watchdog of people's interests, and in this regard, cannot be seen as singing paeans to those in positions of power, including the office of the judges who enjoy authority. Any criticism which is constructive and intended to strengthen the pillars should be welcomed and encouraged.

A TRUE VISIONARY
CJI NV Ramana believes that the media and the judiciary must sail together and more women should become lawyers (right)

India is a democracy where people have the right to express their thoughts and beliefs, without any fear of counter argument. The judiciary—which is the very heart and soul of justice and the keeper of the rule of law—should take criticism of its actions as a key point to improve itself, but instead, it is taking it as an offence. The courts should be patient and tolerant to the views of the media and carry out an intense introspection to improve upon its functioning and moral tenor of judgments. Only then would the judiciary fulfill its role of upholding the ideals and values laid down in our Constitution and be respected by one and all.

We are aware that the freedom of the press flows from the general freedom of speech and expression guaranteed as a fundamental right to all citizens in the Constitution. It is, therefore, the right of the press to say whatever it observes, as long as it is not disrespectful to and prejudiced towards anyone.

The CJI also stressed on the impact the judiciary has on the citizens of a democracy. He said: "People of the country should feel that law and institutions are for everyone and the faith and trust of people strengthen institutions in the democratic country." He said the quality of democracy rests on the quality of justice. Stressing on the importance of a free press, he said: "Journalists are like judges in one sense. Regardless of the ideology, you profess and the beliefs you hold dear, you must do your duty without being influenced by them." The media should hence not be biased and express its views in a fair and non-partisan manner. Only by recognising that the media and the judiciary are sailing together in "Mission Democracy", can we respect and support each other, the CJI said. In order to make our system egalitarian and participative, women must enjoy equal rights and opportunities.

At another event organised by the women advocates of the Supreme Court, the CJI stated his concern about women's less participation in the judiciary. He said: "Enough of suppression of thousands of years. It is high time we have 50 per cent reservation for women in the judiciary. It is your right. It is not charity."

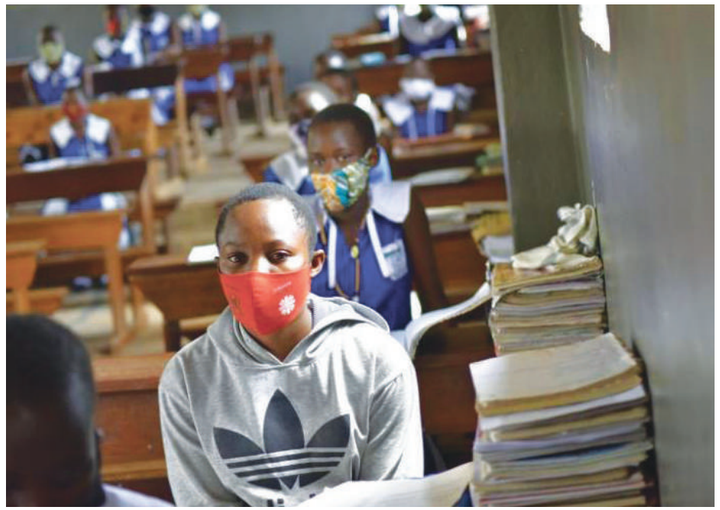
Women's participation in the judiciary is an important step towards ensuring gender equality in a country like India. Justice is felicitous to both the genders, and thus, equal representation of both genders is required for a powerful justice system. Most of the cases these days are against women, and therefore, it is even more essential for women to be aware and participate in this process of justice to make it more potent, applicable and accessible to all.

It will also help in bridging the gender gap and empowering women. It is inspiring to have a chief justice like NV Ramana, paving the way for young women to come forward and stake a claim in the justice delivery system as well as, making our democracy more representative and participative. ■

—The writer is a student of class X in Sanskriti School, New Delhi.

(A new section in which India Legal *encourages young students to express themselves on matters of Constitutional importance)*

Lockdown Lessons



The world's longest lockdown is finally seeing some light at the end of a long dark tunnel. Last week, Uganda allowed students back to their classes (right) after a two year shutdown. According to the United Nations, the east African country experienced the longest disruption of educational institutions globally due to the pandemic. The closure of schools affected around 15.5 million students.

The long closure was necessary to protect children and their families as Uganda tried to curb the spread of Covid-19, Janet Museveni, Uganda's Minister of Education said last September. The shutdown of schools along with other severe measures to try and stem the spread of the virus did help keep the number of Covid-19 deaths relatively low in Uganda. The country recorded around 1,53,000 cases of Covid-19 and about 3,300 deaths. But the United Nations children's agency, UNICEF, says the shutdown was too long and costly for Uganda's young.

Ugandan officials expect that a third of children who were in school when the pandemic began will not return, which could badly impact the future prospects of the new generation. Uganda has one of the world's youngest populations. But those who are returning after a two-year gap are elated. "I am excited that I am going back to school. It has not been easy for me to keep safe at home for this long but I thank God, who has kept me safe," 16-year-old Rachael told *Reuters*.

There will be a huge challenge for teachers to adapt to the long break and for those students who could not access online learning for lack of financial support. Automatic promotions are being planned for most grades while teachers are preparing a pared down curriculum. It will be a learning time for all.

World's Shortest Flight

Loganair flight LM711 is very special flight. According to the Guinness Book of Records, this is the world's shortest scheduled airline service—it lasts just two minutes and covers just 1.7 miles, less than the time most passenger aircraft reach cruising altitude. There are normally two flights a day which connect Westray, an island on the edge of Scotland's Orkney archipelago, to the remote island of Papa Westray.

The flight basically caters to around 80 people who live on the four-square-mile island. This can go up to three fights in summer when tourists show up, wanting to experience the world's shortest passenger flight, even though you barely strap into your seat before you find the plane back on the ground.

The Arctic Warning

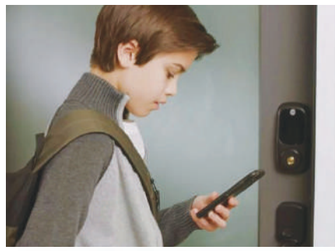
The coldest region of the planet, the Arctic, is heating up twice as fast as the rest of the world, according to this year's Arctic Report Card, released last week by the National Oceanic and Atmospheric Administration. The phenomenon is known as Arctic amplification and it is a huge warning sign about the negative impact of climate change.

Scientists refer to the Arctic as earth's refrigerator due to its key role in regulating global temperatures. Melting in the Arctic at the current pace could have devastating effects around the globe. The biggest long-term effect of warming in the Arctic will be the rise in sea levels. It will have a major impact on places such as South America due to changes in the global ocean currents. It will also accelerate coastal erosion which is a major worry since many major cities across the world have been built along the coastline. Arctic ice melt (above right) also means increased instances of floods. In fact, environmental conditions in the Arctic affect weather systems across the world.

The variability in the climate in the Arctic most likely led to the Texas freeze (right) in February that led to millions without power and hundreds of deaths, according to a study published in *Science* magazine.

The Best of CES

Technology is literally on tap. At the recent Consumer Electronics Show (CES) 2022 in Las Vegas, the new **Kohler PerfectFill** system unveiled Kohler's system integrating your tub into your smart home. With a simple voice command, or via the Kohler Konnect app, the PerfectFill system will automatically draw your bath to the ideal temperature and depth—no monitoring needed. This means you don't need to waste time going into the bathroom to turn a faucet. You could pre-plan your baths so there's no need to wait— it will be ready when you are.



The other big draw at show was **Samsung's Odyssey Ark**. Its huge 55-inch screen is rare for monitors. More importantly, it is aggressively curved, wrapping the screen around you as you sit at your desk.

Then there was **BMW's "color changing paint"** which switches from black to white while you are driving. It's a concept right now but BMW plans other colour changes via its E Ink software via your phone.

Also on display was the **Masonite M-Pwr smart door** (left) which puts every device you need to control the main access point to your home in your hand, including a video doorbell, a smart lock, motion-activated smart lighting, and it even warns you when it's left open.

Electric cars are all the rage and there were plenty on display, including one by Sony! Japan's Sony Group says it plans to launch a company this spring to explore entering the electric vehicle (EV) market. Sony said its imaging, sensing and entertainment technologies put the company in a good position "to redefine mobility. At CES, the company introduced a new vehicle model, called the **VISION-S 02** (left). Experts say that iPhone maker Apple is also planning to come out with an electric car.

Papa Don't Preach

A communication to central universities over the courses taught and the number of students in them has riled the teacher community which claims that it robs them of autonomy

NOTHING UNUSUAL
(Above) Officials of UGC say that the letter was in accordance with the rules laid down by the government; (right) the directive may push many central universities to close several courses with poor enrolments

A UGC communication to central universities on December 28, 2021, has stirred up a hornet's nest. Citing government instructions, it said that courses should be taught based on demand from students and the number of students attending them. It also said that a rationalisation of all departments be done and teaching staff be aligned with the number of students enrolled in such courses.

According to the letter addressed to the registrars of all central universities, the ministry of education conveyed that "there are some departments which were started in central universities without any assessment of the number of students interested in such courses".

The letter by V Talreja, undersecretary, UGC, states that the Department of Higher Education has already fixed the norms for the number of departments that can be opened in a university in its initial five years keeping in mind the number of students expected to join it.

Teachers' organisations have voiced concern over UGC's notice. The Democratic Teachers' Front (DTF) at Delhi University criticised this move and said it was robbing them of their autonomous status. They said universities cannot customise content to meet the demands of students.

In a statement on January 4, DTF said that the government should not be guided by job prospects only while deciding such matters. It will lead to job losses and weaken language and social science departments.

DTF also said that it highlighted the farcical propaganda of the government of promoting languages in the National Education Policy 2020.

The statement further said that it would create a burden on ad-hoc teachers in Delhi University, of which there are nearly 4,500. According to DTF, the government is urging universities to provide up to 40% of their courses online, which might result in a decrease in workload.

The directives of the education ministry, if implemented, will push the central universities to close several courses that do not have high enrolments. The teachers said that academic decisions for universities are now taken by the integrated finance division of the ministry as opposed to the executive and academic councils of universities.

North American universities require students to achieve both breadth and depth of knowledge across disciplines in a chosen subject area, known as a major. Students of arts or humanities are required to take some science courses and vice versa. Normally, students are free to choose their particular electives from a wide range of courses.

However, according to UGC officials, the Commission was only acting in accordance with the rule laid out by the government which made it mandatory for varsities to introduce and provide courses only after conducting a comprehensive evaluation of demands by students.

Defending the notice, a UGC official said on condition of anonymity that apprehensions over the latest UGC communication were misplaced as it was a repetition of existing guidelines that central universities should launch courses and departments after a thorough assessment of demand from students. The official also rejected suggestions that the directive would disproportionately hit language and social science departments.

Typically, North American universities require students to achieve both breadth and depth of knowledge across disciplines in a chosen subject area, known as a major. Thus, students of arts or humanities are required to take some science courses and vice versa. Normally, students are free to choose their particular electives from among a wide range of courses offered by their university as long as they possess the knowledge to understand the subject matter being taught. Elective courses are also offered in the third and fourth years of university, though the choice is more confining and would depend on the particular major the student has chosen.

In February last year, a similar excuse was proposed for IITs by the ministry. Headed by education minister Ramesh Pokhriyal, a council of IITs had recommended that they cut down teaching staff.

The National Education Policy of India 2020 (NEP 2020), which was approved by the cabinet on July 29, 2020, outlines the vision of a new education system for India This policy replaces the previous National Policy on Education, 1986. The policy is a comprehensive framework for elementary education to higher education as well as vocational training in both rural and urban India. After the ▶

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CONDEMNING THE MOVE
Teachers' organisations have expressed concern over UGC's advice to varsities

release of the policy, the government clarified that no one would be forced to study any particular language and that the medium of instruction would not be shifted from English to any regional language. The language policy in NEP is a broad guideline and is advisory in nature and it is up to states, institutions, and schools to decide on the implementation.

The National Education Policy's ambitions for education and call for greater autonomy to higher educational institutions is handicapped by several factors, from shortage of funds to challenges of inequality.

The Department of Higher Education takes care of one of the largest higher education systems of the world, just after the US and China. The Department is engaged in bringing world-class opportunities of higher education and research to the country so that students are not found lacking when facing an international platform. For this, the government has launched joint ventures and signed MoUs to help Indian students benefit from world opinion. The technical education system in the country can be broadly classified into three categories—central government-funded institutions, state government/state-funded institutions and self-financed institutions.

Education in India is primarily managed by the State-run system, which falls under the command of the government at three levels—central, state and local. In a country as large as India, this means that the potential for variations between states in policies, plans, programmes and initiatives for elementary education is vast. Periodically, national policy frameworks are created to guide states in their creation of state-level programmes and policies. State and local government bodies manage the majority of primary and upper primary schools and the number of government-managed elementary schools is growing. Simultaneously, the number and proportion managed by private bodies is growing.

Poorly resourced public schools which suffer from high rates of teacher attrition may have encouraged the rapid growth of private (unaided) schooling in India, particularly in urban areas. Private schools are divided into two types—recognised and unrecognised. Government recognition is an official stamp of approval and for this, a private school is required to fulfil a number of conditions. However, most of those which get recognition, actually fulfil all of them. Private schools in India are highly regulated in terms of what they can teach, in what form they can operate and all other aspects of the operation.

Another challenge presently is that most educational institutes have shifted to online learning platforms due to Covid-19. For a developing country like India where technical constraints like suitability and availability of devices is there, this poses a serious challenge. ■

—By Shivam Sharma and India Legal Bureau

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